



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,909	09/17/2003	Julian A. Quintero	114520.01	2640
45473	7590	01/25/2006	EXAMINER	
HUTCHISON & MASON PLLC			DEVORE, PETER T	
PO BOX 31686			ART UNIT	
RALEIGH, NC 27612			PAPER NUMBER	

3751

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,909

Applicant(s)

QUINTERO ET AL.

Examiner

Peter T. deVore

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-18, 20-44, 47-49, 51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) 17, 18, 29-36 and 49 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-16 and 20-28 is/are allowed.
- 6) ☒ Claim(s) 2, 3, 6-8, 37-42, 47, 51 and 52 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9, 43, 44 and 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 17, 18, 29-36, and 49 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/7/04.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 3, 6-8, 37-42, 47, 51, and 52 are rejected under 35 U.S.C. 102(a) as being anticipated by Voiers et al.

Regarding claim 3, the Voiers reference discloses an applicator/dispenser assembly (Figure 7) comprising a first body portion 20 having a cavity with a container 40 of adhesive material 30 disposed within and a second body portion 60 having a piercing member 55 arranged thereon. Regarding claim 2, in an alternative

embodiment shown in Figure 8c, there are two or more opposing members (the two piercing members 56 on opposite sides of the lower face of body 50). Regarding claims 6-8 and 40-42, see col. 1, lines 10-31. Regarding claims 37 and 38, see the plurality of adhesive containers and applicator tips forming a kit disclosed in col. 10, lines 24-40. Regarding claim 39, see col. 5, lines 1-12. Regarding claims 51 and 52, the covering up of recesses 74 as second body portion 60 is moved into the first body portion 20 acts as a visual indicator of movement of one body relative to the other. Regarding claim 47, the Voiers reference discloses placing an adhesive container in an applicator dispenser having the claimed structure as discussed in the claim 3 discussion supra, moving the second body portion to move the piercing member to break the container (see col. 9, lines 55-65), and dispensing/applying the adhesive to tissue (see col. 10, line 59-col. 11, line 8).

Claims 2, 3, 6-8, 37-42, 47, 51 and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Voiers et al

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claim 3, the Voiers reference discloses an applicator/dispenser assembly (Figure 7) comprising a first body portion 20 having a cavity with a container

40 of adhesive material 30 disposed within and a second body portion 60 having a piercing member 55 arranged thereon. Regarding claim 2, in an alternative embodiment shown in Figure 8c, there are two or more opposing members (the two piercing members 56 on opposite sides of the lower face of body 50). Regarding claims 6-8 and 40-42, see col. 1, lines 10-31. Regarding claims 37 and 38, see the plurality of adhesive containers and applicator tips forming a kit disclosed in col. 10, lines 24-40. Regarding claim 39, see col. 5, lines 1-12. Regarding claims 51 and 52, the covering up of recesses 74 as second body portion 60 is moved into the first body portion 20 acts as a visual indicator of movement of one body relative to the other. Regarding claim 47, the Voiers reference discloses placing an adhesive container in an applicator dispenser having the claimed structure as discussed in the claim 3 discussion supra, moving the second body portion to move the piercing member to break the container (see col. 9, lines 55-65), and dispensing/applying the adhesive to tissue (see col. 10, line 59-col. 11, line 8).

Allowable Subject Matter

Claims 10-16 and 20-28 are allowed.

Claims 4, 5, 9, 43, 44, and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Quintero reference is a continuation-in-part of the relied upon Voiers reference but does not contain any subject matter which would merit additional rejections of the instant claims (this includes double patenting). The Feinberg reference discloses a similar adhesive applicator but without a piercing or breaking member. The Tufts reference discloses a similar applicator, but it is not for adhesive and the opposing breaking members act to deform the cavity, not move into the cavity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

Peter J. Va